



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2007-1102; EPA-R05-OAR-2008-0782; FRL-9771-8]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Ohio; PBR and PTIO**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** As additions to Ohio's State Implementation Plan (SIP) under the Clean Air Act, EPA is approving six Permit-by-Rule (PBR) provisions, a Permit to Install and Operate (PTIO) program, two permanent exemptions from the Permit to Install (PTI) requirement, and a General Permit program. The Ohio Environmental Protection Agency (OEPA) requested these rule revisions to make its air pollution permit program more efficient. Approving these additions will make the PBRs, PTIOs, and general permits Federally enforceable. Because these rule revisions will make Ohio's air permit program more efficient while continuing to protect human health and the environment, EPA approves the revisions.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA R05 OAR 2007-1102; EPA-R05-OAR-2008-0782. All

documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Kaushal Gupta, Environmental Engineer, at (312) 886-6803 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Kaushal Gupta, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6803, [gupta.kaushal@epa.gov](mailto:gupta.kaushal@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Does This Document Address?

II. What Program Changes is EPA Approving?

III. What Action Is EPA Taking?

IV. Statutory and Executive Order Reviews.

**I. What Does This Document Address?**

This document addresses requests from Ohio to incorporate the following rules into the Ohio SIP.

1. PBR and Permanent Exemption Provisions

Ohio's Federally approved construction program, Ohio Administrative Code (OAC) 3745-31 ("Permits to Install New Sources of Pollution") provides the authority for OEPA to issue PTIs to new sources of air pollution or modifications to existing sources of air pollution. For attainment areas, the program was conditionally approved into Ohio's SIP on October 10, 2001 (66 FR 51570) and fully approved on January 22, 2003 (68 FR 2909). For nonattainment areas, the program was fully approved on January 10, 2003 (68 FR 1366). Included in this program at OAC 3745-31-03 ("Permit to install exemptions") are exemptions from the requirement to obtain a PTI before constructing or modifying a source of air pollution. The types of exemptions include permanent exemptions, Federal-based exemptions, discretionary exemptions, and PBR exemptions (exempting certain sources from the PTI requirement as long as they comply with the relevant provisions of the PBR rule).

On April 24, 2006, EPA received a request from OEPA to approve the addition of two permanent exemptions and six PBR provisions to the SIP.

## 2. PTIO and General Permit Programs

Prior to the rulemaking, a minor source (that is, a source not subject to Title V of the Clean Air Act) in Ohio would be issued both a PTI under OAC 3745-31 and a Permit to Operate (PTO) under OAC 3745-35 ("Air Permits to Operate and Variances"). Ohio is now combining both permit programs into a new PTIO program. Under the PTIO program, a minor source would be issued one PTIO instead of a PTI and a PTO.

On June 30, 2008, the state regulations to implement the PTIO program became effective and OAC 3745-35 was rescinded. On July 18, 2008, OEPA submitted to EPA a request to approve the addition of the PTIO program and a General Permit program to the SIP. The changes to Ohio's SIP involve the modification of various parts of OAC 3745-31, the removal of OAC 3745-35, and the addition of OAC 3745-31-29 to enable the issuance of Federally enforceable general PTIs and general PTIOs.

On October 1, 2012, EPA approved the aforementioned PBR, permanent exemption, PTIO, and General Permit program provisions (77 FR 59751) as a revision to Ohio's SIP. However, the provisions included the following terms which EPA had not

intended to act on:

- The SIP revision classified municipal incinerators capable of charging more than 250 tons of refuse per day as having a major stationary source emission threshold of 100 tons per year or more. OAC 3745-31-01(LLL) (2) (a) (ix).
- The SIP revision allowed OEPA Director's discretion for complying with the public participation notification requirements for Federal Land Managers. OAC 3745-31-06(H) (2) (d).
- The SIP revision allowed Director's discretion and specific exemptions with regard to preconstruction activities. OAC 3745-31-33.

EPA withdrew its approval on November 23, 2012 (77 FR 70121).

This document approves the PBR, permanent exemption, PTIO, and General Permit program provisions without taking action on the above language. It is a final action based on the proposed approval published on October 1, 2012 (77 FR 59879).

## **II. What Program Changes Is EPA Approving?**

### **1. PBR and Permanent Exemption Provisions**

EPA is approving the requested modifications and additions to the permanent exemption and PBR provisions in OAC 3745-31-03. The significant changes are as follows.

The permanent exemption from the requirement to obtain a

PTI for organic liquid storage tanks is being expanded to cover larger tanks. Currently, the exemption only applies to tanks with a capacity less than 10,000-gallons; the modification would exempt tanks of less than 19,815-gallon capacity (except for gasoline storage tanks at bulk gasoline plants), tanks between 19,815 and 39,894-gallon capacity with maximum true vapor pressure less than 2.176 pounds per square inch absolute (psia), and tanks of 39,894-gallon or greater capacity with maximum true vapor pressure less than 0.508 psia. Note that permanent exemptions under this rule do not exempt any source from the requirements of the Clean Air Act, including but not limited to, being considered for purposes of determining whether a facility constitutes a major source or being included in a Title V permit application.

PBR exemptions from the requirement to apply for individual PTIs are being added for auto body refinishing facilities, gasoline dispensing facilities with Stage I controls, gasoline dispensing facilities with Stage I and Stage II controls, boilers and heaters, small printing facilities, and mid-size printing facilities that meet certain size, throughput, and process requirements. Each PBR exemption has requirements for emission limitation and/or control, monitoring and/or recordkeeping, reporting, and testing. Furthermore, the PBR

exemptions rule now includes general provisions for recordkeeping, record retention, notification, and reporting requirements that apply to all sources utilizing the PBR exemptions. The general provisions clarify that the PBR exemptions do not exempt any source from the requirements of the Clean Air Act, including but not limited to, being considered for purposes of determining whether a facility constitutes a major source or being included in a Title V permit application.

In a December 1, 2008, letter, Ohio provided technical support for the PBR and PTIO provisions to demonstrate that the provisions are protective of the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstrations and visibility, and are not in violation of section 193 of the Clean Air Act, the "General Savings Clause."

In a February 14, 2012, letter, Ohio provided a survey of the estimated emissions from the state's organic liquid storage tanks to demonstrate that the modified permanent exemption for organic liquid storage tanks would have no negative impact on air quality. In a May 24, 2012, email, Ohio clarified that in the context of this exemption, an "organic liquid" is an organic compound at the temperature and pressure experienced inside the storage tank, and that the organic liquid would have to remain a

liquid to qualify for the exemption. The email further clarified that the "submerged fill" mentioned in this rule is the same as a "submerged fill pipe" as defined in OAC 3745-21-01(C)(6).

## 2. PTIO and General Permit Programs

OAC Chapter 3745-35, which contained the rules for PTOs and Federally Enforceable State Operating Permits, is being rescinded in its entirety from the SIP. OAC 3745-31-29 ("General permits-to-install and general PTIO") is being added to the SIP to make Ohio's general PTIs and general PTIOs Federally enforceable. General PTIs and general PTIOs are based on model permits issued by OEPA. Sources may apply for coverage under a model permit rather than apply for individual permits. Only minor sources may qualify for coverage under a general permit.

We are not taking action on OAC 3745-31-33 ("Site preparation activities prior to obtaining a final permit-to-install or PTIO"), which allows Director's discretion and specific exemptions with regard to preconstruction activities. This rule will not be part of the SIP.

Other, previously approved parts of Ohio's SIP are being modified as follows:

a. OAC 3745-15-03 ("Submission of emission information"), is



being modified to replace all instances of "Board Director" to "Director."

b. OAC 3745-31-01 ("Definitions"), which provides definitions for the permit program, is being expanded to include definitions for "permits to install and operate," "PTIOs," and "express permit processing." The SIP revision submittal includes changes to the definitions of "Air contaminant source" and "Major stationary source" but, per OEPA's request in its July 18, 2008, submittal, we are not approving these two changes at this time. Furthermore, we are not taking action on 3745-31-

01(LL) (2) (a) (ix) which classifies municipal incinerators capable of charging more than 250 tons of refuse per day as having a major stationary source emission threshold of 100 tons per year or more. This provision will not be part of the SIP.

c. OAC 3745-31-02 ("Requirements") now requires sources to obtain PTIs or PTIOs before installation or modification, whether or not such sources are subject to Title V of the Clean Air Act (administered in Ohio under OAC 3745-77). Existing PTIs and PTOs remain effective until superseded by PTIOs. Note that this rule no longer contains the previously approved rule's provisions applying to solid waste disposal facilities and land application of sludge.

d. OAC 3745-31-04 ("Applications") is being expanded to require

PTIO applications.

e. OAC 3745-31-05 ("Criteria for decision by the director") is being expanded to require PTIOs to contain the Best Available Technology (BAT), which is a previously SIP-approved requirement. Certain terms from the rescinded OAC 3745-35, such as conditional permits, are being incorporated into the new PTIO rules. Per Ohio's request in its July 18, 2008, submittal, we are not taking action on the provision that exempts sources with the potential to emit less than 10 tons per year from the BAT requirement. This provision will not be part of the SIP.

f. OAC 3745-31-06 ("Termination") is being rescinded in its entirety and replaced by a new OAC 3745-31-06 ("Completeness determination, processing requirements, public participation, public notice, and issuance"). We are not approving OAC 3745-31-06(H)(2)(d) which allows Director's discretion for complying with the public participation notification requirements for Federal Land Managers.

g. OAC 3745-31-07 ("Revocation") is being expanded to cover termination, expiration, renewal, revision, and transfer.

h. OAC 3745-31-08 ("Procedure for decision by director") is being rescinded in its entirety and replaced by a new OAC 3745-31-08 ("Registration status permit-to-operate") that provides the ongoing requirements for non-Title V sources that received

registration status under the rescinded OAC 3745-35.

i. OAC 3745-31-09 ("Air permit-to-install completeness determinations, public participation, and public notice") is being rescinded in its entirety and replaced by a new OAC 3745-31-09 ("Variances on operation") that has the provisions for variances that were in the rescinded 3745-35.

j. OAC 3745-31-10 ("Air stationary source obligations") is undergoing relocation of certain terms to other parts of the SIP.

k. OAC 3745-31-20 is undergoing minor revisions to update rule citations.

l. OAC 3745-31-22 is undergoing removal of two references to pollution control projects, a component of Federally required New Source Review (NSR) Reform regulations that was vacated from the Federal NSR program.

### **III. What Action Is EPA Taking?**

EPA is approving the modification of OAC 3745-31-03 to incorporate PBRs for auto body refinishing facilities, gasoline dispensing facilities with Stage I controls, gasoline dispensing facilities with Stage I and Stage II controls, boilers and heaters, small printing facilities, and mid-size printing facilities. EPA is approving the modification of OAC 3745-31-03 to incorporate permanent exemptions for organic liquid storage

tanks of less than 19,815-gallon capacity, between 19,815 and 39,894-gallon capacity, and tanks of 39,894-gallon or greater capacity. EPA is approving the rescission of OAC 3745-35 and the modification of OAC 3745-15-03, 3745-31-01, 3745-31-02, 3745-31-04, 3745-31-05, 3745-31-06, 3745-31-07, 3745-31-08, 3745-31-09, 3745-31-10, 3745-31-20, and 3745-31-22 to accommodate Ohio's PTIO program, reorganize other provisions, and remove vacated NSR Reform provisions. EPA is approving OAC 3745-31-29, the program for General PTIs and General PTIOs, as an addition to the SIP.

#### **IV. Statutory and Executive Order Reviews.**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major

rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Reporting and recordkeeping requirements.

Dated: December 28, 2012

Susan Hedman,  
Regional Administrator, Region 5.



40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart KK--Ohio**

2. Section 52.1870 is amended by revising paragraphs (c) (42), (c) (51), (c) (98) (i), and (c) (119) (i) (A), and by adding paragraph (c) (156) to read as follows:

**§ 52.1870 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(42) On February 25, 1980, the State of Ohio submitted the revised Ohio Administrative Code (OAC) Rules 3745-35-01 through 3745-35-04 which set forth requirements for air permits to operate and variances. These rules were adopted on September 28, 1979 and became effective in Ohio on November 7, 1979. Rescinded in 2008; see paragraph (c) (156) of this section.

\* \* \* \* \*

(51) On October 1, 1982, and February 28, 1983 the State of Ohio submitted revisions to Ohio Administrative Code (OAC) Rules 3745-35-03 which set forth requirements for obtaining variances. Rescinded in 2008; see paragraph (c) (156) of this section.

\* \* \* \* \*

(98) \* \* \*

(i) Incorporation by reference. Rule 3745-35-07, adopted November 3, 1994, effective November 18, 1994. Rescinded in 2008; see paragraph (c)(156) of this section.

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(119) \* \* \*

(i) \* \* \*

(A) Ohio Administrative Code 3745-35-02, adopted April 4, 1994, effective April 20, 1994. Rescinded in 2008; see paragraph (c)(156) of this section.

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(156) On April 24, 2006, Ohio EPA submitted two permanent exemptions from the Permit to Install program and six Permit-by-Rule provisions for approval into its SIP. On July 18, 2008, Ohio EPA submitted provisions for a Permit to Install and Operate (PTIO) program and a general permit program for approval into its SIP. The changes to Ohio's SIP involve the modification of various parts of OAC 3745-31, the removal of OAC 3745-35, and the addition of OAC 3745-31-29 to enable the issuance of federally enforceable general PTIs and general PTIOs. On June 30, 2008, the state regulations to implement the PTIO program became effective and OAC 3745-35 was rescinded.

(i) Incorporation by reference.

(A) Paragraph (A) of Ohio Administrative Code Rule 3745-15-03, "Submission of emission information.", effective June 30, 2008.

(B) Ohio Administrative Code Rule 3745-31-01, "Definitions.", effective December 14, 2007, except for paragraphs (I), (LLL) (2) (a) (ix), (LLL) (2) (a) (xxi), (LLL) (4) (t), and (QQQ) (1) (b).

(C) Ohio Administrative Code Rule 3745-31-02, "Applicability, requirements, and obligations.", effective June 30, 2008.

(D) Ohio Administrative Code Rule 3745-31-03, "Exemptions.", effective June 30, 2008.

(E) Ohio Administrative Code Rule 3745-31-04, "Applications.", effective June 30, 2008.

(F) Ohio Administrative Code Rule 3745-31-05, "Criteria for decision by the director.", effective June 30, 2008, except for paragraph (A) (3) (a) (ii).

(G) Ohio Administrative Code Rule 3745-31-06, "Completeness determinations, processing requirements, public participation, public notice, and issuance.", effective June 30, 2008, except for paragraph (H) (2) (d).

(H) Ohio Administrative Code Rule 3745-31-07, "Termination, revocation, expiration, renewal, revision and transfer.", effective June 30, 2008.

(I) Ohio Administrative Code Rule 3745-31-08, "Registration status permit-to-operate.", effective June 30, 2008.

(J) Ohio Administrative Code Rule 3745-31-09, "Variances on operation.", effective June 30, 2008.

(K) Ohio Administrative Code Rule 3745-31-10, "NSR projects at existing emissions units at a major stationary source.", effective June 30, 2008.

(L) Ohio Administrative Code Rule 3745-31-20, "Attainment provisions—innovative control technology.", effective June 30, 2008.

(M) Ohio Administrative Code Rule 3745-31-22, "Nonattainment provisions—conditions for approval.", effective June 30, 2008.

(N) Ohio Administrative Code Rule 3745-31-29, "General permit-to-install and general PTIO.", effective June 30, 2008.

(O) Ohio Administrative Code Rule 3745-31-32, "Plantwide applicability limit (PAL).", effective June 30, 2008.

(P) June 2, 2008, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio EPA.